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ABSTRACT

Concern has grown among black educators about government litigation and administrative proceedings involving state systems of higher education as they relate to equality of educational opportunity. Properly prepared and presented to the courts, these cases can enhance equal educational opportunities by eliminating the continuing effects of past discriminatory practices. The three statewide cases in which the United States is a litigant are important examples; they illustrate the enormous potential of litigation, and they also reveal the dangers inherent in challenging an entrenched statewide system, dangers that the litigation will retard equal educational opportunity. These suits involve the states of Tennessee, Mississippi, and Louisiana. In the last two, the cases are in the early stages, but have great potential effects because of the number of traditionally black institutions involved. (Author/MSE)

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Department of Justice

SPEECH BY

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BEFORE THE

NATIONAL CONFERENCE OF BLACK LAWYERS
BATON ROUGE, LOUISIANA

ON

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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IN EARLY 1977, A GROUP OF BLACK COLLEGE PRESIDENTS MET WITH PRESIDENT CARTER TO EXPRESS THEIR CONCERN ABOUT THE FUTURE OF TRADITIONALLY BLACK INSTITUTIONS. THEY WERE PARTICULARLY CONCERNED ABOUT THE GOVERNMENT'S LITIGATION AND ADMINISTRATIVE PROCEEDINGS INVOLVING STATE SYSTEMS OF HIGHER EDUCATION. THIS CONCERN IS SHARED BY A GREAT NUMBER OF BLACK EDUCATORS AND PROFESSIONALS. WHEN COUPLED WITH APPREHENSION OVER A POSSIBLE ADVERSE RULING IN BAKKE, THE CONCERN HAS RESULTED IN A NEW PESSIMISM IN OUR FIGHT FOR EQUALITY OF OPPORTUNITY.

WHILE THE FATE OF BAKKE NOW RESTS IN THE SUPREME COURT, THE LITIGATION INVOLVING THE STATEWIDE SYSTEMS OF HIGHER EDUCATION IN THE SOUTH IS VERY MUCH WITH US. AS ONE WHO HAS BEEN AND IS INVOLVED IN THIS LITIGATION, I DO NOT SHARE THIS PESSIMISM. I BELIEVE THAT, PROPERLY PREPARED AND PRESENTED TO THE COURTS, THESE CASES CAN ACCOMPLISH EXACTLY WHAT THEY WERE DESIGNED TO DO. THEY CAN ENHANCE EQUAL EDUCATIONAL OPPORTUNITIES BY DISMANTLING RACIALLY DUAL SYSTEMS OF HIGHER EDUCATION AND BY ELIMINATING THE CONTINUING EFFECTS OF PAST DISCRIMINATORY PRACTICES.

THE THREE STATEWIDE CASES IN WHICH THE UNITED STATES IS A LITIGANT ARE IMPORTANT EXAMPLES. THEY ILLUSTRATE THE ENORMOUS POTENTIAL OF THE LITIGATION TO ENHANCE EDUCATIONAL OPPORTUNITIES. THEY ALSO REVEAL THE DANGERS INHERENT IN CHALLENGING AN ENTRENCHED

STATEWIDE SYSTEM: DANGERS THAT THE LITIGATION WILL, IN FACT, RETARD SUCH OPPORTUNITIES. IN TENNESSEE, WE HAVE THE BENEFIT OF JUDGING THE BENEFITS OF THE LITIGATION AFTER A NUMBER OF YEARS. I BELIEVE THIS JUDGMENT WILL SUPPORT THE CLAIM THAT LEGAL CHALLENGES TO THESE ENTRENCHED DUAL SYSTEMS CAN HAVE ENORMOUSLY BENEFICIAL RESULTS.

THE LAWSUIT AGAINST TENNESSEE AND ITS HIGHER EDUCATION GOVERNING BOARDS WAS BROUGHT ORIGINALLY BY PRIVATE PLAINTIFFS IN MAY OF 1968. THE UNITED STATES INTERVENED AS A PLAINTIFF ONE MONTH LATER. WE INTERVENED BECAUSE OF THE ENORMOUS PUBLIC IMPORTANCE OF THE CASE, AND BECAUSE WE REALIZED THAT PROSECUTING A LAWSUIT OF THIS MAGNITUDE WAS USUALLY BEYOND THE RESOURCES OF PRIVATE PARTIES. AFTER A HEARING LATER IN 1968, THE DISTRICT COURT FOUND THAT TENNESSEE HAD ENGAGED IN A DE JURE STATEWIDE PRACTICE OF SEPARATE AND UNEQUAL RACIAL SEGREGATION IN HIGHER EDUCATION AND THAT NO AFFIRMATIVE STEPS HAD BEEN TAKEN TO DISMANTLE THE DUAL SYSTEM. WE PROPOSED THAT THE STATE BE REQUIRED TO SUBMIT A COMPREHENSIVE AND REALISTIC PLAN FOR THE EFFECTIVE DESEGREGATION OF TENNESSEE'S COLLEGES. JUDGE GRAY ENTERED AN ORDER TO THAT EFFECT, AND HE INSTRUCTED THE STATE TO PAY PARTICULAR ATTENTION TO THE CONDITIONS AT TENNESSEE STATE UNIVERSITY IN NASHVILLE, WHICH IS THE STATE'S ONLY TRADITIONAL BLACK COLLEGE.

OVER THE NEXT NINE YEARS, THERE WERE A SERIES OF HEARINGS IN WHICH THE COURT CONSIDERED THE STATE'S PROGRESS -- OR LACK OF

FOLLOWING A MONTH-LONG HEARING, JUDGE GRAY ISSUED SUCH AN ORDER MERGING TSU AND UNIVERSITY OF TENNESSEE IN FEBRUARY OF 1977.

UNLIKE TENNESSEE, THE LAWSUITS AGAINST THE STATES OF MISSISSIPPI AND LOUISIANA ARE STILL IN THE EARLY STAGES. NEITHER HAS GONE TO TRIAL. BECAUSE OF THE NUMBER OF TRADITIONALLY BLACK INSTITUTIONS INVOLVED IN EACH STATE, THEY PROMISE, NONETHELESS, TO RESULT IN CHANGES OF EVEN GREATER SIGNIFICANCE AND MAGNITUDE THAN THOSE IN TENNESSEE. THE ESTABLISHMENT AND MAINTENANCE OF THE DUAL SYSTEMS IN THOSE STATES ARE FAMILIAR STORIES. IN MISSISSIPPI, THE STATE OPERATED, AND CONTINUES TO OPERATE, THREE HISTORICALLY BLACK UNIVERSITIES AND TWO BLACK JUNIOR COLLEGES. AS LATE AS 1962 (MISSISSIPPI WAS THE LAST OF THE SOUTHERN STATES TO PERMIT ANY SORT OF DESEGREGATION), THE FIFTH CIRCUIT COURT OF APPEALS TOOK JUDICIAL NOTICE THAT THE STATE OPERATED A SEGREGATED SYSTEM OF HIGHER EDUCATION. WHILE SOME PROGRESS HAS BEEN MADE SINCE THAT DATE (AT LEAST IN THE ENROLLMENT OF BLACK STUDENTS AT WHITE INSTITUTIONS) LITTLE HAS BEEN DONE TO UPGRADE THE TRADITIONALLY BLACK INSTITUTIONS AND ELIMINATE WHAT IN MANY CASES IS THE SECOND CLASS ROLE OF THOSE INSTITUTIONS.

COMPARE, FOR EXAMPLE, THE TWO LAND-GRANT COLLEGES IN MISSISSIPPI - MISSISSIPPI STATE AND ALCORN STATE. THE EVOLUTION OF THESE TWO INSTITUTIONS SINCE THEIR ESTABLISHMENT IS ILLUSTRATIVE OF THE TREATMENT AFFORDED BLACK AND WHITE LAND-GRANT INSTITUTIONS THROUGHOUT THE SOUTH. MISSISSIPPI, LOUISIANA, AND ALL OF THE FORMER

PROGRESS -- IN ACHIEVING DESEGREGATION. OUTSIDE OF NASHVILLE, THE STATE MADE SLOW BUT STEADY PROGRESS IN ENROLLING BLACKS AT THE TRADITIONALLY WHITE COLLEGES, AND THE PERCENTAGE OF BLACKS WHO WENT TO COLLEGE DOUBLED BETWEEN 1968 AND 1976. IN FACT, OVER 18 PERCENT OF COLLEGE FRESHMEN IN 1976 WERE BLACK (16 PERCENT OF TENNESSEE'S POPULATION IS BLACK). SO BOTH THE GOVERNMENT AND THE DISTRICT COURT WERE SATISFIED WITH THE OVERALL PROGRESS WHICH WAS BEING MADE, UNDER COURT ORDER, IN THE STATE AS A WHOLE.

BUT THE SITUATION IN NASHVILLE WAS VERY DISHEARTENING. INSTEAD OF COMMITTING RESOURCES TO MAKE TENNESSEE STATE A COMPREHENSIVE UNIVERSITY SERVING MIDDLE TENNESSEE, THE STATE EXPANDED A NEIGHBORING WHITE COLLEGE IN NASHVILLE (THE UNIVERSITY OF TENNESSEE AT NASHVILLE) AT AN UNPRECEDENTED RATE. THIS ACTION HAD SEVERAL PREDICTABLE RESULTS; IT PREVENTED TENNESSEE STATE FROM DESEGREGATING; IT MAINTAINED THE DUAL SYSTEM IN NASHVILLE; IT PREVENTED TENNESSEE STATE FROM RECEIVING MILLIONS OF DOLLARS WHICH COULD HAVE ENABLED IT TO BECOME A TRULY EXCELLENT AND COMPREHENSIVE UNIVERSITY; AND IT SEEMED TO BE A CLEAR STATEMENT THAT TENNESSEE STILL CONSIDERED TENNESSEE STATE TO BE AN INFERIOR COLLEGE FOR BLACKS.

TO REMEDY THIS ENTRENCHMENT OF THE DUAL SYSTEM IN NASHVILLE, THE JUSTICE DEPARTMENT PROPOSED THAT THE UNIVERSITY OF TENNESSEE AT NASHVILLE SHOULD BE MERGED INTO TENNESSEE STATE, UNDER THE GOVERNANCE OF THE BOARD OF REGENTS (WHICH HAS JURISDICTION OVER TENNESSEE STATE).

SLAVE STATES, ESTABLISHED IN ACCORDANCE WITH THE MORRILL ACTS OF 1862 AND 1890, TWO LAND-GRANT INSTITUTIONS - ONE FOR WHITES AND ONE FOR BLACKS. I MIGHT ADD THAT WITH THE PASSAGE OF THE SECOND MORRILL ACT, CONGRESS GAVE OFFICIAL SANCTION TO SEPARATE-BUT-EQUAL HIGHER EDUCATION. THIS WAS THE FIRST EXPLICIT FEDERAL APPROVAL OF SEGREGATED EDUCATION. THIS CONGRESSIONAL INCENTIVE WAS EFFECTIVE. THE THIRTEEN SOUTHERN AND BORDER STATES WITHOUT A BLACK LAND GRANT COLLEGE PROMPTLY ESTABLISHED ONE AND THEN PROCEEDED SYSTEMATICALLY TO MISAPPROPRIATE THE SHARE OF MORRILL FUNDS THAT BELONGED TO BLACK COLLEGES. AFTER A DECADE OF THE 1890 MORRILL ACT, EXPENDITURES ON WHITE LAND GRANT COLLEGES EXCEEDED THOSE FOR BLACK ONES BY A RATIO OF 26:1. BY 1916, NOT A SINGLE COLLEGE LEVEL COURSE WAS TAUGHT IN THE BLACK LAND GRANT COLLEGES.

DURING THE NEXT 50 YEARS, ALCORN STATE AND THE OTHER 1890 COLLEGES, LIKE MOST OF THE SOUTH'S PUBLIC BLACK COLLEGES, CONTINUED TO SUFFER FROM UNDER-FINANCING AND NEGLECT. RESOURCES, FACILITIES, LABORATORIES, RESEARCH GRANTS AND PROGRAMS CONTINUED TO FLOW FROM THE ALL WHITE STATE LEGISLATURES TO THE ALL WHITE 1862 COLLEGES. DURING THIS PERIOD, THESE SAME LEGISLATIVE BODIES VOTED OCCASIONAL IMPROVEMENTS FOR THE 1890 SCHOOLS. IN NEARLY EVERY CASE, THEY SIMPLY AWARDED TO THE BLACK SCHOOLS WHAT EVERY WHITE COLLEGE IN THE STATE HAD TAKEN FOR GRANTED FOR MANY YEARS. THESE "CATCH-UP" FUNDS, HOWEVER, WERE MERELY FRAGMENTARY RESTITUTION FOR GENERATIONS OF SYSTEMATIC MISAPPROPRIATION. IN NO REAL SENSE COULD THEY ENABLE THE OVERCOMING OF THE RELATIVE DISADVANTAGE BETWEEN THE BLACK SCHOOLS AND THE WHITE SCHOOLS. I BELIEVE THAT ANY REMEDY FOR ALCORN STATE,

OR ANY OTHER BLACK LAND GRANT COLLEGE, MUST COME TO TERMS WITH THIS FUNDAMENTAL FACT.

THE RESULTS OF EIGHTY-SEVEN YEARS OF DISCRIMINATION ARE CLEARLY EVIDENT TODAY. MISSISSIPPI STATE NOW ENROLLS OVER 10,000 FULL-TIME STUDENTS (10% ARE BLACK) WITH EXTENSIVE DEGREE PROGRAMS AND RESEARCH FACILITIES LEADING TO THE DOCTORAL DEGREE. ALCORN STATE, ON THE OTHER HAND, ENROLLS A STUDENT BODY OF LESS THAN 3000 (WITH VIRTUALLY NO WHITE STUDENTS) OFFERING ONLY 28 BACCALAUREATE DEGREE PROGRAMS. MISSISSIPPI STATE OFFERS 94 BACCALAUREATE PROGRAMS, 68 MASTERS, 38 DOCTORAL AND 18 SPECIALIST PROGRAMS.

THE NEGATIVE RESULTS OF YEARS OF RACIAL DUALISM IS EVEN MORE APPARENT IN MISSISSIPPI'S JUNIOR COLLEGES. IN ACCORDANCE WITH ITS POLICY OF RACIAL SEGREGATION, THE LEGISLATURE DESIGNATED SPECIFIC GEOGRAPHICAL AREAS FOR 12 WHITE COLLEGES: THE TWO BLACK JUNIOR COLLEGES WERE NOT GIVEN, AND DO NOT HAVE, STATUTORILY PRESCRIBED GEORGRAPHICAL SUPPORT DISTRICTS. TODAY, THESE BLACK JUNIOR COLLEGES SHARE GEOGRAPHICAL SUPPORT DISTRICTS WITH WHITE INSTITUTIONS AND MEMBERS OF THEIR GOVERNING BOARDS ALSO SERVE ON THE GOVERNING BOARDS OF NEARBY WHITE COLLEGES. THAT THESE GOVERNING BOARDS HAVE, UNTIL THE PAST FEW YEARS, BEEN COMPOSED ONLY OF WHITE PERSONS, MAY GIVE A HINT AS TO THE SHARE OF RESOURCES AND FACILITIES WHICH WERE AWARDED TO THE BLACK COLLEGES.

IN LOUISIANA, THE EFFECTS OF RACIAL DUALISM ARE EVEN MORE APPARENT. IN AN EFFORT TO ENSURE THE SEPARATION OF THE RACES, THE STATE ESTABLISHED SEPARATE INSTITUTIONS AND SEPARATE EDUCATIONAL PROGRAMS IN THE SAME LOCALITIES. HENCE, FOR EVERY CAMPUS OF LSU (IN BATON ROUGE, IN NEW ORLEANS, IN SHREVEPORT) WE NEED ONLY LOOK ACROSS TOWN TO FIND A CAMPUS OF SOUTHERN. WITHOUT NEGATING THE ENORMOUSLY IMPORTANT ROLE THAT SOUTHERN HAS PLAYED, AND CONTINUES TO PLAY, IN LOUISIANA'S SYSTEM OF HIGHER EDUCATION, NO ONE CAN SERIOUSLY CONTEND THAT THE BREADTH AND SCOPE OF EDUCATIONAL OPPORTUNITIES AT SOUTHERN - PARTICULARLY THOSE CAMPUSES IN NEW ORLEANS AND SHREVEPORT - EQUAL THOSE AT THE LSU CAMPUSES. WHEREAS LSU - SHREVEPORT HAS BECOME A COMPREHENSIVE FOUR-YEAR UNIVERSITY, SOUTHERN-SHREVEPORT, ESTABLISHED IN THE SAME YEAR AS LSU-S, REMAINS A TWO-YEAR INSTITUTION SERVING LESS THAN 1000 STUDENTS. THE UNIVERSITY OF NEW ORLEANS, FORMERLY LSU-NO, IS NOW THE SECOND LARGEST UNIVERSITY IN THE STATE OFFERING EXTENSIVE UNDERGRADUATE AND GRADUATE PROGRAMS. SOUTHERN - N.O., IS LESS THAN 1/5 THE SIZE OF ITS WHITE COUNTERPART WITH EDUCATIONAL PROGRAMS LIMITED TO THE BACCALAUREATE LEVEL.

THIS IS NOT TO SAY THAT THE BLACK INSTITUTIONS OF LOUISIANA, AND THOSE IN THE OTHER STATES, DO NOT SERVE IMPORTANT ROLES IN PUBLIC SYSTEMS OF HIGHER EDUCATION. WHAT SHOULD BE OBVIOUS, HOWEVER, IS THAT WHERE DUALISM EXISTS, WHERE INSTITUTIONS WERE ESTABLISHED IN ORDER TO KEEP THE RACES SEPARATE AND WHERE RESOURCES AND EDUCATIONAL

PROGRAMS WERE ALLOCATED TO BLACK AND WHITE INSTITUTIONS BY AN ALL-WHITE POWER STRUCTURE. THE INEVITABLE RESULT IS AN UNEQUAL, AND IN SOME CASES, SUBORDINATE ROLE FOR THE BLACK INSTITUTIONS.

WHILE THE DISCRIMINATORY EFFECTS OF RACIAL DUALISM UNDER THE CONDITIONS I HAVE JUST DESCRIBED ARE READILY APPARENT, WHAT SHOULD BE DONE ABOUT REDRESSING THIS DISCRIMINATION IS NOT SO APPARENT. THE COURTS, THE GOVERNMENT AND THE PARTIES TO THE CURRENT LITIGATION ARE CHARGED WITH THE RESPONSIBILITY FOR MAKING THE RIGHT DECISIONS REGARDING THE FUTURE OF THE BLACK INSTITUTIONS AND THE FUTURE OF EQUAL EDUCATIONAL OPPORTUNITIES. I BELIEVE THAT THERE ARE GENUINE AND UNDERSTANDABLE CONCERNS REGARDING THESE CHOICES - CONCERNS THAT SHOULD NOT BE IGNORED BY THOSE OF US WHO ARE INVOLVED IN THIS UNDERTAKING. WHILE LITIGATION CONCERNING A STATE'S RESPONSIBILITIES TOWARD DISESTABLISHING DUALISM IN HIGHER EDUCATION IS RELATIVELY SCARCE, THERE ARE SOME PRECEDENTS WHICH I BELIEVE GUARD AGAINST THE DANGERS INHERENT IN REORGANIZING EDUCATIONAL SYSTEMS. ALTHOUGH THE MOVEMENT TOWARD DESEGREGATION WHICH LED TO BROWN BEGAN AT THE COLLEGE LEVEL, THE PROGRESS IN DISESTABLISHING THE DUAL SYSTEM IN ELEMENTARY AND SECONDARY EDUCATION HAS NOT BEEN MATCHED IN INSTITUTIONS OF HIGHER EDUCATION. I CAN ASSURE YOU, HOWEVER, THAT THIS ADMINISTRATION BELIEVES THAT BROWN'S COMMAND AND PROMISE MUST BE HONORED IN OUR COLLEGES.

THE SUPREME COURT HAS HELD REPEATEDLY THAT THE STATE HAS AN AFFIRMATIVE DUTY TO DISMANTLE A STATUTORY DUAL SYSTEM. THIS AFFIRMATIVE DUTY IS NOT PECULIAR TO DESEGREGATION CASES; NOR IS IT CONFINED TO ELEMENTARY AND SECONDARY SCHOOLS. THE LOWER COURTS, IN THE FEW CASES THAT ADDRESSED THE SUBJECT, HAVE UNIFORMLY RECOGNIZED THAT THERE IS AN AFFIRMATIVE DUTY TO DESEGREGATE THE DUAL SYSTEM AT THE COLLEGE LEVEL; EXAMPLES, WOULD INCLUDE JUDGE GRAY'S ORDER IN THE TENNESSEE CASE, JUDGE JOHNSON'S ORDERS INVOLVING THE ALABAMA TRADE SCHOOLS AND JUNIOR COLLEGES AND THE DISTRICT OF COLUMBIA COURT OF APPEARS AFFIRMANCE OF JUDGE PRATT'S ORDER IN ADAMS.

WHILE RECOGNIZING THE AFFIRMATIVE DUTY DESCRIBED ABOVE, THE COURTS HAVE ALSO HELD THAT THE SPECIFIC REMEDIES USED IN ELEMENTARY AND SECONDARY SCHOOL CASES ARE NOT NECESSARILY THOSE TO BE USED IN HIGHER EDUCATION. THE REASONS ARE OBVIOUS. BESIDES BEING VOLUNTARY RATHER THAN COMPULSORY (AS JUDGE GRAY STATED "COLLEGES ARE NOT COMPULSORY AND EVERY ONE CAN TESTIFY THAT THEY'RE NOT FREE") HIGHER EDUCATION OPERATES ON A STATEWIDE OR REGIONAL BASIS, NOT LOCAL; THERE ARE FEW, IF ANY, "ATTENDANCE ZONES" IN HIGHER EDUCATION; HIGHER EDUCATION PROGRAMS VARY FROM INSTITUTION TO INSTITUTION AND ARE NOT UNIFORM; STUDENTS ARE FREE TO LEAVE THE STATE OR TO ATTEND PRIVATE COLLEGES IN PURSUIT OF A COLLEGE EDUCATION. IN SHORT, THESE FUNDAMENTAL DIFFERENCES NECESSITATE NEW AND IMAGINATIVE APPROACHES TO DISMANTLING THE RACIAL DUALISM WHICH IS PECULIAR TO HIGHER EDUCATION.

WHILE THIS ADMINISTRATION BELIEVES THAT THE COMMAND AND PROMISE OF BROWN MUST BE HONORED IN OUR COLLEGES, IT ALSO BELIEVES THAT THE TRANSITION TO A UNITARY SYSTEM SHOULD NOT BE ACCOMPLISHED BY PLACING A DISPROPORTIONATE BURDEN UPON THOSE WHO HAVE SUFFERED FOR SO LONG UNDER THE DEGRADATION AND DISCRIMINATION OF RACIAL SEGREGATION. I CAN FURTHER ASSURE YOU THAT THE DEPARTMENT OF JUSTICE WILL NOT RECOMMEND, SUGGEST, OR ENDORSE ANY PLAN IN OUR CASES WHICH WILL DIMINISH EDUCATIONAL OPPORTUNITIES FOR BLACKS IN HIGHER EDUCATION OR WHICH WILL DISPROPORTIONANTLY BURDEN THOSE FOR WHOSE RIGHTS THESE CASES WERE BROUGHT.

IN THE FEW INSTANCES IN WHICH SPECIFIC REMEDIAL PROGRAMS WERE PROPOSED BY THE GOVERNMENT, THE DANGERS I HAVE BEEN DESCRIBING WERE FULLY CONSIDERED. IN THE TENNESSEE CASE, FOR EXAMPLE, THE DISTRICT COURT DIRECTED THAT THE PLAN ENDORSED BY THE DEPARTMENT OF JUSTICE BE IMPLEMENTED AND THAT THE MERGER OF TSU AND UT-N OCCUR UNDER THE GOVERNANCE OF THE BOARD OF REGENTS - NOT UNDER THE BOARD OF THE UNIVERSITY OF TENNESSEE.

IN THE MISSISSIPPI AND LOUISIANA LITIGATION, WE HAVE NOT YET HAD AN OPPORTUNITY TO PROPOSE SPECIFIC REMEDIAL PROGRAMS ALTHOUGH IN THE LATTER CASE, WE ARE NOW EVALUATING A RECENTLY ADOPTED "MASTER PLAN" PREPARED BY THE STATE WHICH MANY HAVE CHARGED COMPLETELY DOWNGRADES THE ROLE OF THE HISTORICALLY BLACK INSTITUTIONS.

THE JUSTICE DEPARTMENT'S LAWSUITS IN TENNESSEE, LOUISIANA AND

MISSISSIPPI REPRESENT ONLY PART OF THE ADMINISTRATION'S EFFORTS IN THE AREA OF HIGHER EDUCATION. IN THE EARLY 1970'S, HEW RULED THAT 10 STATES WERE STILL OPERATING DUAL SYSTEMS OF HIGHER EDUCATION, IN VIOLATION OF TITLE VI OF THE 1964 CIVIL RIGHTS ACT. BUT HEW TOOK NO ENFORCEMENT ACTION AGAINST THOSE STATES. IN 1973, THE DISTRICT AND CIRCUIT COURTS IN THE DISTRICT OF COLUMBIA ORDERED HEW TO DEMAND ACCEPTABLE DESEGREGATION PLANS FROM THOSE STATES. LOUISIANA AND MISSISSIPPI REFUSED TO COOPERATE, AND THE JUSTICE DEPARTMENT BROUGHT THE LAWSUITS WHICH I HAVE ALREADY DISCUSSED. HEW ACCEPTED THE PLANS WHICH WERE SUBMITTED BY SIX OF THE OTHER STATES IN 1974; NAMELY, FLORIDA, VIRGINIA, NORTH CAROLINA, ARKANSAS, GEORGIA AND OKLAHOMA. */ TWO YEARS LATER, HEW ADMITTED TO THE DISTRICT COURT THAT THESE PLANS HAD NOT PRODUCED NOTICEABLE PROGRESS TOWARDS DESEGREGATION, BUT HEW AGAIN DID NOT INSTITUTE ENFORCEMENT ACTION AGAINST ANY STATE. THE DISTRICT COURT ORDERED HEW TO REVOKE APPROVAL OF THE PLANS AND TO PUBLISH CRITERIA FOR DESEGREGATING DUAL SYSTEMS OF HIGHER EDUCATION. THESE CRITERIA WERE PUBLISHED BY HEW IN AUGUST OF 1977, AND THEY PROVIDE PERHAPS THE CLEAREST EXPRESSION OF THIS ADMINISTRATION'S VIEWS ON THE OBLIGATIONS OF STATES TO PROVIDE EQUAL EDUCATIONAL OPPORTUNITY IN HIGHER EDUCATION. THE CRITERIA REQUIRE STATES WHICH HAD A DUAL SYSTEM TO SET GOALS AND TIMETABLES FOR INCREASING MINORITY COLLEGE ENROLLMENT, BOTH IN THE STATE COLLEGES AS A WHOLE AND IN THE TRADITIONALLY WHITE COLLEGES. THE CRITERIA ALSO RECOGNIZE THE UNIQUE IMPORTANCE OF BLACK COLLEGES NATIONALLY IN MEETING THE EDUCATIONAL NEEDS OF BLACK STUDENTS. THE

CRITERIA INCLUDE THE CAVEAT THAT THE TRANSITION TO A UNITARY SYSTEM MUST NOT BE ACCOMPLISHED BY PLACING A DISPROPORTIONATE BURDEN UPON BLACK STUDENTS, FACULTY OR INSTITUTIONS OR BY REDUCING THE EDUCATIONAL OPPORTUNITIES CURRENTLY AVAILABLE TO BLACKS. MORE SPECIFICALLY, THE CRITERIA REQUIRE THE STATES TO GIVE PRIORITY CONSIDERATION TO PLACING NEW UNDERGRADUATE, GRADUATE OR PROFESSIONAL DEGREE PROGRAMS AT TRADITIONALLY BLACK INSTITUTIONS; TO TAKE OTHER SPECIFIC STEPS TO STRENGTHEN THE ROLE OF TRADITIONALLY BLACK INSTITUTIONS, INCLUDING IMPROVEMENTS AND EXPANSION OF RESOURCES, PHYSICAL PLANTS, PROGRAM OFFERINGS, ETC; AND TO INSURE INCREASED ACCESS OF BLACKS TO PUBLIC HIGHER EDUCATION INCLUDING GRADUATE PROGRAMS.

YOU CAN BE ASSURED THAT OUR EFFORTS, THROUGH LITIGATION, TO DESEGREGATE DUAL SYSTEMS OF HIGHER EDUCATION WILL BE INFORMED AND INFLUENCED BY SIMILAR CONSIDERATIONS.

DR. JAMES CHEEK, PRESIDENT OF HOWARD UNIVERSITY, IN A RECENT ADDRESS TO THE INSTITUTE FOR THE STUDY OF EDUCATIONAL POLICY, OUTLINED THE CRITICALLY IMPORTANT ROLE THAT HIGHER EDUCATION CAN PLAY IN ADVANCING EQUALITY OF OPPORTUNITY. AT THE CONCLUSION OF HIS ADDRESS, DR. CHEEK QUOTED EPICTETUS WHO IN REFLECTING ON THE CHARACTER OF GREEK SOCIETY IN HIS DAY, OBSERVED THAT "MAN HAS DECIDED THAT ONLY FREE MEN SHALL BE EDUCATED, BUT GOD HAS DECREED THAT ONLY THE EDUCATED SHALL BE FREE." I BELIEVE THAT AS WE MAKE THE IMPORTANT DECISIONS REGARDING THE FUTURE OF BLACK HIGHER EDUCATION, WE WOULD BE WELL SERVED TO REMEMBER THESE WORDS.